

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
 )  
U S WEST Communications, Inc. and )  
The Rye Telephone Company Joint )  
Petition for Waiver of the Subscriber )  
Carrier Selection Change Provisions )  
of the Telecommunications Act of 1996 )

CC Docket No. 94-129

**JOINT PETITION FOR WAIVER  
OF U S WEST COMMUNICATIONS, INC.  
AND THE RYE TELEPHONE COMPANY**

I. REQUEST FOR RELIEF

U S WEST Communications, Inc. ("U S WEST") and The Rye Telephone Company ("Rye"), pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") rules,<sup>1</sup> respectfully request the Commission to grant a limited waiver of the authorization and verification requirements of the Commission's carrier-change rules, 47 C.F.R. Sections 64.1100 through 64.1190,<sup>2</sup> and relevant Orders,<sup>3</sup> to the extent necessary to permit Rye to be substituted as the

<sup>1</sup> See 47 C.F.R. § 1.3.

<sup>2</sup> The Commission's verification rules prohibit a telecommunications carrier from submitting a preferred carrier change order unless certain criteria have been met. See 47 C.F.R. § 64.1150.

<sup>3</sup> See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning

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local carrier for certain of U S WEST's current customers in a small service territory within the Pueblo exchange in Colorado. Approval of the transfer of the small portion of the Pueblo exchange from U S WEST to Rye (said approval having been requested by this Commission in October, 1999)<sup>4</sup> would entail changing the current carrier of approximately ninety-four access lines.

As demonstrated herein, the rural exchange sales being undertaken between Rye and U S WEST fully satisfy the special circumstances required for a waiver of Commission rules, as stated in Wait Radio v. FCC.<sup>5</sup> Moreover, grant of the instant Petition will further serve the public interest.<sup>6</sup>

## II. BACKGROUND

In the Joint Petition for Waivers, U S WEST sought to delete one small portion of the Pueblo exchange containing approximately ninety-four access lines

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Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 1508 (1998), appeal in abeyance sub nom. MCI WorldCom, Inc. v. FCC, No. 99-1125 (D.C. Cir.).

<sup>4</sup> See Joint Petition for Waivers of U S WEST Communications, Inc. and Rye Telephone Company, Inc., filed Oct. 12, 1999 ("Joint Petition for Waivers").

<sup>5</sup> WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

<sup>6</sup> The Colorado Public Utilities Commission ("PUC") considered the public interest in its Recommended Decision of Administrative Law Judge William J. Fritzell Granting Joint Application to Transfer a Portion of Certificate of Public Convenience and Necessity from U S WEST to Rye Telephone Company, and Approving Tariff Filings by U S WEST and Rye Telephone Company, Docket No. 99A-112T, Decision No. R99-1013, dated Sep. 16, 1999 ("Recommended Decision"). The Colorado PUC found that "the proposed rearrangements of the exchange areas will promote the public interest and welfare and will not adversely impact the public switched network of the local exchange provider or impact the provider's financial integrity." Recommended Decision at 6-7. The Recommended Decision was attached to the Joint Petition for Waivers.

from its Colorado study area.<sup>7</sup> And, if needed, Rye sought a waiver to add those approximately ninety-four access lines to its proposed study area. On November 30, 1999, the Commission released a Public Notice seeking comments on the proposed study area waiver request.<sup>8</sup>

Importantly, affected customers have been fully informed of the carrier changes associated with the transfer of these access lines and accounts. Notifications have been sent to all customers in the area to advise of the sale of the customer base and the transfer of the customers from U S WEST to Rye. The notification also advised customers that the sale would result in higher quality and more reliable service for the impacted customers, including a rate reduction for local access charges. Individuals were advised that -- while the sale would require a number change for the customers in question -- the cost of that number change, and the cost for a recorded announcement advising callers how to proceed, would be borne by U S WEST. And, customers were provided a local and toll free number for the Colorado PUC where protests about the transfer could be lodged, as well as a local number for a U S WEST employee who could be contacted to answer any questions. Moreover, no charges associated with the change in carriers will be assessed to customers.

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<sup>7</sup> The sale would entail the sale of customer accounts and accounts receivable.

<sup>8</sup> Public Notice, Rye Telephone Company, Inc. and U S WEST Communications, Inc. File Petition for Waiver of Section 61.41(c) of the Commission's Price Cap Rules and the Definition of "Study Area" in Part 36 of the Commission's Rules; Pleading Cycle Established, DA 99-2669, CC Docket No. 96-45, rel. Nov. 30, 1999.

After the sale has been completed, Rye will contact these customers again with a "welcome" letter. In that letter, much of the information that customers have already received will be repeated. In addition, customers will be advised that the transfer may affect their long distance carrier (both intrastate and interstate), and that should they currently use a carrier that is not present in Rye's switch, then a Rye representative will contact them to coordinate a carrier change at no charge.

### III. SPECIAL CIRCUMSTANCES WARRANT A WAIVER

The Commission has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>9</sup> Such circumstances exist here. To the extent the basic sale between U S WEST and Rye is ultimately approved as in the public interest, the concomitant action of moving the customers over to Rye is obviously a necessary aspect of realizing that public interest.<sup>10</sup>

In an increasing number of Orders, the Commission (or the Common Carrier Bureau through delegated authority) is finding that granting of similar waivers is in the public interest.<sup>11</sup> As in the cases of these previously-granted waivers, prior

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<sup>9</sup> See Wait Radio v. FCC, 418 F.2d at 1159; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>10</sup> For this reason, U S WEST agrees with Global Telecompetition Consultants, Inc. ("GTC") that the Commission should take action regarding its existing carrier-change rules either to generally waive the requirements in those cases where a sale of some portion (or all) of the subscriber base is occurring or amend the rules to render them inapplicable to such sales. See Petition for Rulemaking submitted by GTC on Dec. 30, 1999.

<sup>11</sup> See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; International Exchange Communications, Inc. Request for Waiver, Order, 14 FCC Rcd. 15268, 15269-70 ¶ 4

customer notification has already occurred. In addition, a follow-up “welcome” letter will be sent at approximately the same time as the occurrence of the actual transfer. Requiring additional notifications or soliciting affirmative customer responses will cause confusion among the customers, including the potential misunderstanding among customers they they are able to exercise choice they might not actually have.<sup>12</sup>

By granting this Petition, the Commission will ensure that the policy goals of the carrier-change rules are served without compromising the benefits associated with the commercially-reasonable alienation of property and the seamless transition of carriers serving end-user customers in the Rye area. Given that the

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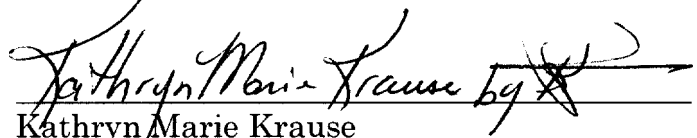
(1999) (“IEComm Order”) (waiver granted to allow transfer of customer base pursuant to asset purchase agreement with another carrier); and citing to WAIT Radio v. FCC, 418 F.2d at 1159; id. at 15270 ¶ 5 (granting International Exchange Communications, Inc. a waiver in conjunction with the purchase of International Telecommunications Corp.’s assets); In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Iowa Telecommunications Services Petition for Waiver, CC Docket No. 94-129, Order, DA 99-2777, rel. Dec. 21, 1999 (waiver granted to allow Iowa Telecommunications Services (“ITS”) to change the preferred carrier of those consumers currently presubscribed to GTE of the Midwest to ITS); In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; MCI WorldCom, Inc. Request for Waiver, Order, 14 FCC Rcd. 12264 (1999) (waiver granted to allow transfer of customer accounts pursuant to purchase agreement with another carrier); In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Sprint Communications Company, L.P. Request for Waiver, Order, 14 FCC Rcd. 9118 (1999) (waiver granted to allow transfer of customer base to Sprint after dissolution of a joint venture with another carrier); In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; CoreComm Limited Request for Waiver, Order, 14 FCC Rcd. 7301 (1999) (waiver granted to allow transfer of customer base after sale or corporate assets as part of bankruptcy proceeding).

above outlined circumstances are similar to those in which the Commission has previously granted waivers of its carrier-change rules, U S WEST and Rye are confident that the Commission will find the granting of this Petition warranted and in the public interest.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:



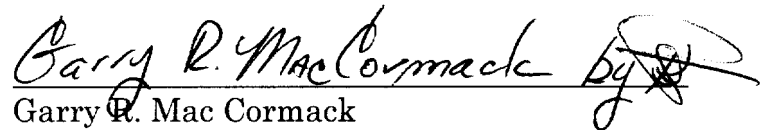
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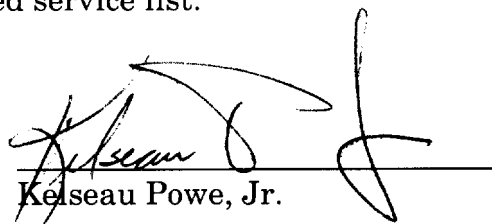
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<sup>12</sup> For example, currently, there are no other local carriers serving the area in question.

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on the 24<sup>th</sup> day of March, 2000, I have caused a copy of the foregoing **JOINT PETITION FOR WAIVER OF U S WEST COMMUNICATIONS, INC. AND RYE TELEPHONE COMPANY, INC.** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.



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3/24/2000